

Editor's note: Reconsideration denied by order dated Jan. 15, 1974

EUGENE A. BOND
AND
BETTY GENE BURGESS

IBLA 73-324

Decided October 12, 1973

Appeal from decision of Colorado State Office, Bureau of Land Management, declaring appellants' mining claims null and void.

Affirmed.

Mining Claims: Contests! ! Rules of Practice: Government Contests

Where a contest complaint against a mining claim contains charges which, if proven, would render the claim invalid, and the contestee fails to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestee and the claim is properly declared null and void under the Department's regulations governing such contests, which allow no exception for appellant's inadvertence and neglect.

APPEARANCE: Eugene A. Bond, Esq., Denver, Colorado, pro se and for appellant Burgess.

OPINION BY MR. FISHMAN

Eugene A. Bond and Betty Gene Burgess have appealed from a decision (Contest No. 514), dated March 14, 1973, of the Colorado State Office, Bureau of Land Management, which declared their mining claims null and void. These claims are located within sec. 36, T. 11 S., R. 80 W., 6th P.M., Chaffee County, Colorado. They are identified as the Arkansas Gulch placer mining claim (Tract B), located April 29, 1896, and the Cache Cree Nos. 3 and 4 placer mining claims, located March 25, 1967.

The Colorado State Office issued a contest complaint on January 16, 1973. It charged, inter alia, that no valuable mineral deposits had been discovered within the limits of the claims. Such a charge, if established, is a sufficient basis for invalidation of the claims. See United States v. Nettie G. Harper, 8 IBLA 357 (1972).

The complaint was served by certified mail February 3, 1973, on Burgess, and February 5, 1973, on Bond. It clearly stated:

Unless the contestees file an answer to the complaint in said Colorado State Office within thirty days after service hereof, the allegations of the complaint will be taken as admitted, and the contest will be decided without a hearing.

On March 14, 1973, after appellants failed to file a timely answer, the mining claims were declared null and void. This decision in turn was served by certified mail on appellants on March 15, 1973.

On March 21, 1973, appellants filed an answer to the complaint, a motion to set aside the default and decision of March 14, 1973, and an appeal. In arguing for the motion to set aside the default, appellants assert that the file was misplaced and forgotten until after the time for answer had expired. Appellants point to Rule 60(b) 1/ of the Colorado Rules of Civil Procedure which permits judicial relief from a "final judgment, order or proceeding" on grounds similar to the reasons asserted by appellants to support their motion to set aside the State Office decision.

The regulation governing answers to complaints filed in contest proceedings states that:

Within thirty days after service of the complaint * * *, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, * * *. 43 CFR 4.450-6 [2/]

1/ Appellants admit that they " * * * have been unable to find a specific provision in the [Departmental] rules to that effect."

2/ Although 43 CFR 4.450 generally regulates private contests and protest proceedings, government contests are also covered. 43 CFR 4.451-2.

This regulation has been consistently and strictly enforced, even to the barring of an answer filed merely one day late, and assertedly due to inadvertence and excusable neglect. United States v. Sainberg, 5 IBLA 270, 272 (1972), aff'd sub nom., Sainberg v. Morton, Civil No. 72-217 PCT! WCF, September 10, 1973, (D.C. Ariz.). See United States v. Pruett, 3 IBLA 23, 26 (1971). Cf. James D. Lindsay, 10 IBLA 238 (1973); United States v. Humboldt Placer Mining Co., 71 I.D. 434, 442 (1964).

Therefore, the answer of appellants is not cognizable, the motion to set aside the default and decision of March 14, 1973, is denied and the decision below is affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Joan B. Thompson
Member

Edward W. Stuebing
Member

